(1973) 05 CAL CK 0006

In the Calcutta High Court

Case No : F.M.A. No. 612 of 1971

State of West Bengal and Others — APPELLANT

Vs

Lalchand Agarwala and Others — RESPONDENT

Date of Decision : 31-05-1973

Acts Referred:

Central Sales Tax Act, 1956 — Section 14

Citation : 77 CWN 910

Hon'ble Judges : S.P. Mitra, C.J;A.K. Janah, J

Bench : Division Bench

Advocate : S.C. Das Gupta and Samarendra Nath Dutta, for the Appellant;Ranadeb Chaudhuri, Somendra Chandra Bose and Bhagabati Prosad Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Sankar Prasad Mitra, C.J.—This is an appeal from a judgment delivered by Anil Kumar Sen, J. on the 14th September, 1971. The respondent No. 1 is the sole proprietor of and carries on business under the name and style of M/s. Lalchand Sohanlal at No. 67/46 Strand Road, in Calcutta. The said respondent is an importer of groundnuts to Calcutta. These imports are made from different States in India, The question of law that arose for consideration by the learned trial Judge was whether ''Groundnuts'' as such, were liable to any levy under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1970 (hereinafter referred to as "the Entry Tax Act").

2. Sen J. has issued a Writ in the nature of Mandamus directing the appellants not to impose any levy under the provisions of the Entry Tax Act on groundnuts imported by the said respondent until and unless it is found and established that such importation of groundnuts is for being used as edibles, as such, and not as oil seeds.

3. Before we proceed any further, let us set out some of the relevant provisions

of the Entry Tax Act, Section 2(i) definds specified goods''. The expression ''Specified goods'' means the goods specified in column 2 of the Schedule.

Then we come to section 6(1) which is as follows :?

Save as otherwise provided in this Chapter, there shall be levied and collected, for the purposes of this Act, a tax on the entry of every specified good into the Calcutta Metropolitan Area (for consumption, use or sale therein) from any place outside that Area, at such rate, not exceeding the rate specified in the corresponding entry in column 3 of the Schedule as the State Government may, by notification, specify.

We now proceed to set out the relevant provisions in the Schedule referred to in section 6(1). These provisions are as follows :?

Serial No.

Specified goods

Rate of Tax.

1

2

3

Class I?Articles of Food and Drink

* *

* *

* * *

4.

Edibles

* * * *

(t)

nuts excluding betelnuts

6% ad valorem (1?% ad valorem for dry fruits).

(u)

Oilman Stores (except edible oils)

-do-

* *

* ** *

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Class III?Articles for industrial use and Articles used for fuel, lighting, Washing and Polishing.

A.

Articles for industrial use and articles used for fuel.

* *

* * *

* *

16.

Mineral oils of all sorts

(a)

* * *

* *

(xii)j

Turkey Red oil, bye product of mineral oils

2 paise per litre.

* *

* *

* *

(b)

crude oil

1 paise per 4 litres.

(c)

Grease, petroleum jelly

2 paise ad valorem

* *

* * *

* *

B.

Articles used for lighting

22.

Oilseeds of inedible oils.

50 paise per 50 Kilograms

4. Upon going through the above provisions of the Entry Tax Act it appears that only the goods which have been specified are taxable. The goods not specified are excluded from the operation of the Act. Secondly, the dear intention of the legislature is that edible oils or oil seeds for edible oils would not be liable to any tax.

5. Mr. Das Gupta, learned Advocate appearing for the appellants, has argued that groundnuts are ''Nuts'' within the meaning of item 4(t) of the Schedule. In other words, groundnuts come within the ordinary dictionary meaning which should be adhered to in construing the relevant provisions of the Entry Tax Act.

6. In Avedh Sugar Mills Ltd. v. The Sales Tax Officer, Sitapur, and another, 31 STC, 9 469, the Supreme Court was construing some of the provisions of the U.P. Sales Tax Act, It has been stated that in finding out the true meaning of ''oil seeds'' found in the Sales Tax Law, the Court should not to refer to dictionaries but ascertain the meaning ascribed to it in commercial parlance. The Supreme Court says that there can hardly be any doubt that in commercial circles groundnut is dealt with as an oilseed, and groundnut is mostly used for manufacture of groundnut oil. According to the Supreme Court groundnut is therefore, "oil-seed" for the purpose of the purchase tax under the U.P. Sales Tax Act, 1948. Delivering the Supreme Court''s judgment, Hegde, J. has observed at page 470 as follows :?

We shall now proceed to consider whether groundnuts are seeds and further whether they are oil-seeds. In finding out the true meaning of the term "oilseeds" found in the sales Tax law in question, we are not to refer to dictionaries. We are to find out the meaning ascribed to that term in commercial parlance. (See the decision of this Court in Commissioner of Sales Tax, Madhya Pradesh, Indore v. Jaswant Singh Charan Singh). There can hardly be any doubt that in commercial circles groundnut is dealt with as an oilseed. The commercial journals and newspapers while quoting the market price of oil-seeds list groundnuts as one of the species of oilseeds. From this, it is clear that in commercial circles groundnut is treated as oil-seed.

A seed is one which germinates. It is not disputed that the groundnut germinates. Hence it is undoubtedly seed. The next question is whether it is generally used for manufacture of oil. Here again, there can hardly be any doubt that groundnut is mostly used for the manufacture of groundnut oil which is used in the manufacture of dalda and other cooking media. Groundnut is none of the items which is mostly used in this country for the manufacture of cooking media.

These observations of the Supreme Court make it abundantly clear that groundnut in the commercial world is considered as an oil seed and not edible nuts as such.

7. In further support of this proposition we may refer to the West Bengal Edible Oilseed Dealers Licensing Order, 1965. Clause 2(b) of this Order provides:

''edible oilseeds'' mean seeds from which one or more of the varieties of oil specified in schedule?I to this order are extracted.

In Schedule I?item 3 we find groundnuts oil the corresponding oilseed is known as Chinabadam.

Then again section 14 of the Central Sales Tax Act, 1956 runs thus:?

It is hereby declared that the following goods are of special importance in inter-State trade of Commerce:?

* * * *

(vi) oilseeds, that is to say,?

(i) Groundnut or Peanut (Arachis Hypogaes).

8. These statutory provisions also indicate that groundnuts are treated as oil-seeds in mercantile transactions and the legislature in enacting the provisions of the Entry Tax Act was certainly aware of this commercial connotatia. Since the tax under the Entry tax Act can be levied only on specified goods, if the intention was to include groundnuts within the purview of the Act, it should have been specifically mentioned in the Schedule. In the context of the intention of the legislature, already referred to, we are unable to accept the argument of the learned Advocate for the appellants that ''nuts'' in the widest sense include groundnuts and, therefore, they are taxable under the Entry Tax Act. We have no doubt that the legislature wanted to exclude oil-seeds for edible oils in order that edible oils manufactured in West Bengal can compete with edible oils manufacture elsewhere. And that is why groundnuts have not been included in the Schedule to the Entry Tax Act. We are, therefore, in agreement with the conclusions of the trial Judge and we dismiss this appeal. The judgment and order passed by the Court below are affirmed. There will be no order as to costs.

Janah, J.

I agree.